

## **REMARKS**

### **Status of the Application**

Claims 1-40 were originally pending in the application. In the Office Action dated December 28, 2004, the Examiner rejected claims 1-40. Claims 1, 5, 11, 16, 23-26, 28, 35, 38 and 40 have been amended; Claims 4, 22, 31, 34, 36 and 37 have been cancelled; and, no claims have been added. Therefore, claims 1-3, 5-21, 23-30, 32-33, 35 and 38-40 remain at issue in the current application.

Applicants request the Examiner make note a Supplemental Information Disclosure Statement (IDS) is being filed with a Request for Continued Examination. The IDS includes references cited in the International Search Report mailed January 26, 2005. Applicants believe disclosure of these references does not effect the allowability of the claims at issue.

### **Allowable Subject Matter**

The Examiner stated Claims 4, 5, 22-26, 31 and 37 would be allowable if rewritten to overcome the rejections under 35 U.S.C. §112, paragraph 2 and to include all of the limitations of the base claim and any intervening claims. Applicants have thus amended Claim 1 to incorporate the limitations of Claim 4; amended Claim 5 to depend from Claim 1; amended Claim 11 to incorporate the limitations of Claim 22; amended Claims 23-26 to depend from Claim 11; amended Claim 28 to incorporate the limitations of Claim 31; and amended Claim 35 to incorporate the limitations of Claim 37. As such, these claims should be allowed as amended.

**Rejection of Claims Under 35 U.S.C. §112**

The Examiner rejected Claims 1-39 under 35 U.S.C. §112 as being indefinite. By this Response, Claims 1, 11, 16, 28, and 35 have been amended to address the Examiner's rejections.

With respect to Claims 11 and 28, the preamble has been amended to recite "determining the presence or concentration of pathogenic prion protein" in order to correlate with the body of the claim. Support for the term "concentration" is found in the Specification on page 20, lines 21-22 which discloses that analysis of the pathogenic prion protein proceeds via chromatography, leading to a result indicative of the presence or concentration of pathogenic prion protein.

Claim 35 has been amended to clarify the language "analyzing the test device" as requested by the Examiner. Applicants' amendment explains that Claim 35 is directed to analyzing the labeled antibody that forms a complex with the pathogenic prion protein. Support for this language is found in the Specification on page 20, lines 17-22.

In view of the foregoing reasons and amendments, Applicants respectfully request Examiner to withdraw the rejection of Claims 1, 11, 16, 28, 35 and the claims depending therefrom under 35 U.S.C. §112.

**Rejection of Claims Under 35 U.S.C. §103**

Claims 1-3, 7-17, 19, 27, 28, 32-36, 40 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Schmerr et al., US 6,150,172, in view of Sundrehagen, WO 00/36418, and further in view of Pugia et al., US 5,846,754. This is however, moot in light of Applicants withdrawing of claims and amendments set forth above. As to Claim 40, Applicants have

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incorporated subject matter the Examiner deemed allowable into the Claim. As such, Applicants respectfully request these claims should be allowed as amended.

Claims 6, 18, 20, 21, 29, 30, 38, and 39 were rejected under 35 U.S.C. §103(a) as being unpatentable over Schmerr et al., US 6,150,172, in view of Sundrehagen, WO 00/36418, and further in view of Pugia et al., US 5,846,754. Claims 6, 18, 20, 21, 29, 30, 38, and 39 ultimately depend from Claims 1-3, 7-17, 19, 27, 28, 32-36, 40, and add further limitations thereon. Accordingly, these claims are likewise not obvious in view Schmerr et al., Sundrehagen, and Pugia et al.. Applicants respectfully request the rejection under §103(a) be withdrawn with respect to these claims.

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**Conclusion**

In view of the amendments and arguments presented above, Applicants respectfully submit that Claims 1-3, 5-21, 23-30, 32-33, 35 and 38-40 are now in condition for allowance, and such action to this end is respectfully requested. The Examiner is authorized to call the undersigned counsel if it would expedite the process of this application.

Respectfully submitted,

Dated: June 27, 2005

By: 

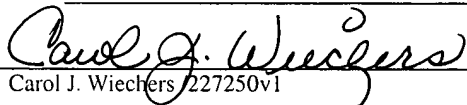
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**CERTIFICATE OF MAILING (37 C.F.R. § 1.8a)**

I hereby certify that this correspondence is, on the date shown below, being deposited with the United States Postal Service, with first class postage prepaid, in an envelope addressed to: Mail Stop RCE, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450

on June 27, 2005

  
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